POLICE DEPARTMENT

October 2, 2020

In the Matter of the Charges and Specifications - against – Sergeant Jason Rozenfeld Tax Registry No. 942481 102nd Precinct	Case No. 2018-18756

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Matthew Schieffer, Esq.
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Crosswest Office Center
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To:
HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Sergeant Jason Rozenfeld, while assigned to the 102nd Precinct, on or about April 29, 2017, while on-duty, in Queens County, did wrongfully instruct a subordinate to improperly classify a Robbery Complaint to a Petit Larceny Complaint.
   P.G. 207-07, Page 1, Paragraph 5(a) — PRELIMINARY INVESTIGATION OF COMPLAINTS (OTHER THAN VICE RELATED OR NARCOTICS COMPLAINTS)

2. Said Sergeant Jason Rozenfeld, while assigned to the 102nd Precinct, on or about April 29, 2017, while on-duty, in Queens County, did fail and neglect to refer a Robbery Complaint to the Detective Squad when the perpetrator may be identified or is known.
   P.G. 207-07, Page 2, Paragraph 7 — PRELIMINARY INVESTIGATION OF COMPLAINTS (OTHER THAN VICE RELATED OR NARCOTICS COMPLAINTS)

3. Said Sergeant Jason Rozenfeld, while assigned to the 102nd Precinct, on or about March 19, 2018, while on-duty, in Queens County, did wrongfully instruct a subordinate to improperly classify a Burglary Complaint to a Petit Larceny Complaint.
   P.G. 207-07, Page 1, Paragraph 5(a) — PRELIMINARY INVESTIGATION OF COMPLAINTS (OTHER THAN VICE RELATED OR NARCOTICS COMPLAINTS)

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 20 and August 26, 2020. Respondent, through his counsel, entered pleas of Not Guilty to the subject charges. The Department called Lieutenant Joseph Napolitano, Police Officer Anthony Iglesias and Police Officer Christopher Scheer as witnesses. Respondent called Police Officer Bartolomeo D'Angelo and testified on his own behalf. A stenographic transcript of the trial

record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of the charged misconduct. I recommend that he forfeit twenty-three (23) vacation days.

ANALYSIS

The following facts are not in dispute. At all relevant times, Respondent was a Patrol Supervisor at the 102nd Precinct. On April 29, 2017, Police Officer Anthony Iglesias and Bartolomeo D'Angelo were assigned to patrol duties in the 102nd Precinct. On that date, Iglesias had been a police officer for approximately six months, having been assigned to the 102nd Precinct upon graduation from the Police Academy (T. 102). On March 19, 2018, Police Officer Christopher Scheer was assigned to patrol duties in the 102nd Precinct.

On two occasions, April 29, 2017, and March 19, 2018, Respondent was summoned to the scene of suspected crimes by police officers under his supervision. On each occasion, the responding police officer presented information to Respondent which each officer believed constituted sufficient grounds for the filing of a felony Complaint Report (UF-61).

On April 29, 2017, Police Officer Anthony Iglesias prepared a "scratch copy" of a UF-61 for a Robbery in the Third Degree charge. The complainant informed Iglesias that a cell phone and $40 had been taken from him by a man on a bicycle. Respondent directed Police Officer Iglesias' partner, Police Officer Bartolomeo D'Angelo, to prepare a complaint report for a Petit Larceny.

On March 19, 2018, Police Officer Christopher Scheer prepared a "scratch copy" of a UF-61. The complainant informed Scheer that a laptop computer had been taken from the library of a controlled-access school building by an unknown person. According to Police Officer Scheer, Respondent directed him to classify the crime as a petit larceny. Respondent

denied giving Scheer such direction and claimed he told Scheer to leave the crime classification box blank. The additional actions Respondent took at the scene of each incident and the bases for the directions he provided to his subordinates on each occasion, are in dispute.

The resolution of the factual issues in this case will turn on the credibility of witnesses. Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Maloney v Suardy*, 202 A.D.2d 297 [1st Dep't 1994]). This case also presents the task of assessing the credibility of two subordinate Members of Service testifying against a fellow Member of Service who exercised supervisory authority over both of them.

I find Lieutenant Napolitano to be a disinterested witness who testified in accordance with his professional responsibility to conduct audits of Department records for accuracy. I found his testimony to be forthright and credit it as such.

I further find the testimony of Police Officer Iglesias to be logical and credible. His observations of the victim of a reported robbery were unembellished and comport with common sense. Having observed his in-court demeanor, I find that his testimony was motivated by a desire to perform his duties professionally and be responsive to the questions posed during the hearing. While it is true that Police Officer Iglesias, at the time of the April 29, 2017, incident, was essentially a rookie police officer, his actions in response to the observations he made align with the analysis of the case made by Lieutenant Napolitano, an officer with significantly greater experience. Police Officer Iglesias, as he testified, was mindful that his assessment of the case was at odds with that of his supervisor and documented the direction he was given in recognition of that reality. I find this factor enhances the reliability of his ability to recall the events he

recorded. Moreover, his testimony was consistent with the evidence later obtained from the same complainant during the Quality Assurance review, recorded in documentary evidence.

Similarly, I credit the testimony of Police Officer Scheer as logical, forthright and consistent with common sense. I found his courtroom demeanor and the substance of his testimony to be consistent with that of a police officer's duty of providing candid and complete information to the Tribunal. He, too, created a contemporaneous record of the direction he received from Respondent, a factor which enhances his credibility.

Respondent's testimony, in contrast, was self-serving and appeared tailored to advance a subjective interpretation of the facts not called for by either his position, police procedure or the law. As discussed in greater detail below, his attempts to defend his decision-making as based upon his training and experience were unpersuasive, as they actually were based upon dubious interpretations of the law. I find his testimony, in the aggregate, to be unreliable.

Police Officer D'Angelo's testimony appeared to focus on his assertion that the three males denied that force or a threat of force had been present in the April 29, 2017. This assertion, if accepted as fact, would have been irreconcilable with Police Officer Iglesias' recollection of events, particularly since D'Angelo testified that the denial occurred in his patrol car, which Iglesias would have likely heard as well. As he was Police Officer Iglesias' partner that evening, any material discrepancy between their respective testimonies could be significant.

In this case, however, D'Angelo made a prior inconsistent statement in a Department interview where he asserted the exact opposite (*i.e.*, that the complainant told him he feared for his life). D'Angelo inexplicably persisted in asserting that he did not remember whether the complainant had made that statement, as he reported in in his Department interview, but insisted

that he had been told that there was no force or threat used. I find these competing assertions made by the same witness to be irreconcilable and illogical.

D'Angelo's testimony was at times self-serving, as when he professed to have no feelings, one way or the other, about the classification of the crime but felt that the complaint should have been a petit larceny. For all the foregoing reasons, I find his testimony to be unreliable, as it appeared to be tailored to advance an interpretation of the events favoring Respondent's position.

The following is a summary of the relevant evidence at trial.

April 29, 2017 Robbery

At approximately 2020 hours, Police Officer Iglesias and his partner, Police Officer D'Angelo[1], responded to a radio report of a past robbery (T. 85, 96). Police Officer Iglesias was acting as the recorder on that tour (T. 92-93). When both police officers responded to the complainant's home, they met the complainant, his/her mother and his/her two brothers (T. 85, 103).

Police Officer Iglesias interviewed the complainant, who reported that he had been threatened by a male on a bicycle who took a cell phone and $40.00 (T. 85, 88). According to Police Officer Iglesias, the suspect told the complainant, "Dash out your pockets or I'm going to punch you in the face[2]" (T. 104). The complainant's two brothers corroborated his assertions (T. 86). The complainant's mother further corroborated the complainant's assertions (*Id.*). Police Officer Iglesias testified that at that point, he believed that there was sufficient information to take a report for a robbery (*Id.*). He then contacted Respondent, his patrol supervisor, in

[1] Police Officer Iglesias was not Police Officer D'Angelo's regular partner (T. 207).

[2] Police Officer Iglesias testified that "Dash out your pockets" is Indian slang for "empty your pockets" (T. 123-124).

accordance with procedure for the investigation of complaints concerning "major crimes" (T. 87).

When Respondent arrived at the complainant's home, Police Officer Iglesias made a report of the information he had obtained from the witnesses; Respondent then spoke with the complainant, the complaint's mother and the complaint's two brothers (T. 88, 104, 105). Police Officer Iglesias did not hear the discussion between Respondent and the witnesses because he had returned to his patrol car to begin drafting a scratch complaint report (UF-61) for what he believed to be a robbery (T. 89, 105, 121). He testified that he wrote in the narrative section of the complaint form that "male threatened CV and the perp took the belongings of the CV" and listed the classification of the crime as "robbery" (T. 89).

Police Officer Iglesias testified that Respondent then directed him to take the complainant on a canvass (T. 90). He took the complainant, along with his brothers, on the canvass but the results were negative (*Id.*). At Respondent's direction, Police Officer Iglesias then took the three brothers to the 102nd Precinct Detective Squad (T. 90-91, 105, 106). He provided a report of his investigation to a detective, then left the young men with the detectives and returned to the main floor of the precinct, where he proffered his scratch UF-61 to Respondent (T. 92-93, 107). According to Police Officer Iglesias, Respondent returned his scratch copy to him, then had a conversation with Police Officer D'Angelo, after which D'Angelo wrote another report (T. 93, 117). Police Officer Iglesias did not have an opportunity to review D'Angelo's report but held onto the scratch UF-61 which he had prepared, testifying that he did so because he disagreed with Respondent's classification of the crime as a petit larceny (T. 93-94).

According to Police Officer Iglesias, Respondent never discussed with him why he wanted to classify the crime as a petit larceny and he learned of the reclassification from

D'Angelo; he conceded, however, that had Respondent directed him to classify the crime as such, he would have done so, as he would have considered it a lawful order (T. 94-95, 107, 135). He made the following entry in his activity log: "2030 As per Sergeant Rozenfeld, change 61 to petit larceny" (T. 97). Police Officer Iglesias testified that he made the entry in order to prove that he was ordered to take such action if it were to be questioned at a later time (T. 97, 100).

After Police Officers Iglesias and D'Angelo resumed their patrol duties, Iglesias made an unrelated arrest (T. 98). He ended his tour at 0800 hours on April 30, 2017 (*Id.*). When he reported for his tour of duty the next day, he encountered Sergeant Marchello, the Crime Analysis Sergeant, who initiated an unsolicited discussion about Iglesias' investigation of the robbery the previous day (T. 98-99, 136). Police Officer Iglesias explained to Sergeant Marchello that he had written up a scratch complaint for a robbery, but that Respondent had changed the classification to a petit larceny and directed Police Officer D'Angelo to write a separate report (T. 99). He testified that he spoke to no one other than Sergeant Marchello about the incident and only spoke with him because Sergeant Marchello questioned him about it (T. 101). Sergeant Marchello asked Police Officer Iglesias to bring him the scratch copy he had prepared and he did so (T. 109).

Police Officer Iglesias testified on cross-examination that he recalled Respondent interviewing the complaint at his residence but did not recall whether Respondent interviewed complainant at the crime scene during the canvass (T. 113-114). He confirmed that the complainant's mother did not go to the crime scene for the canvass (T. 112, 116). While Police Officer Iglesias did not have an independent recollection of whether Respondent had a conversation with the complainant at the crime scene, he could not rule out that one took place (T. 115, 116).

Police Officer Iglesias conceded that he did not know whether either of the complainant's two brothers had currency or cell phones in their possession at the time of the alleged robbery, as he did not recall asking them (T. 124-125). Similarly, he did not recall asking the complainant's brothers whether they felt threatened (T. 130-131).

Lieutenant Joseph Napolitano, assigned to the Quality Assurance Division, testified that he reviewed the investigation conducted by Lieutenant Michael Berg into the propriety of the classification of the April 29, 2017, incident by Respondent (T. 32). In that investigation, the Quality Assurance Division conducted a crime classification audit of the petit larceny report in evidence as Department Exhibit 7. According to Lieutenant Napolitano, Sergeant Lasko, another member of the complaint assessment team, conducted an interview on November 21, 2017, with the complainant on the original report (T. 37-39). On the Quality Assurance Division coversheet prepared by Sergeant Lasko after the interview, he wrote, "As per QAD investigation, C/V re-interviewed and stated perp told C/V 'give me your things or I will kill you.'" "C/V was in fear for his safety and gave perp cell phone and 40 dollars. C/V informed reporting officers of these facts at the time of the report" (T. 39; Dept. Ex. 5). After the QAD review, the crime was upgraded to a robbery (Dept. Ex. 7).

Lieutenant Napolitano testified that in the normal course of police investigations, a crime is classified on the UF-61 as it was reported by the victim (T. 42). In the case of a suspected robbery, the responding police officer should notify his supervisor that an index crime[3] had taken place, which in turn should prompt the supervisor to notify an executive at the precinct (T. 41). The victim of the robbery should then be taken to the Detective Squad, if available, to view photographs of potential suspects (*Id.*). Lieutenant Napolitano asserted that the victim's ability

[3] "Index crime" refers to one of the seven felonies this Department tabulates as indicia of crime trends.

or inability to identify a suspect from photographs does not affect the classification of the crime as a robbery (T. 42). The responding police officer should complete a scratch 61 for submission to the Desk Officer prior to the end of his tour; such robbery complaint, once entered into the Omniform system, would be referred to the precinct Detective Squad for further investigation (T. 41-42). In contrast, a petit larceny classification would ordinarily cause the complaint to be "closed" at the patrol level (T. 43). Lieutenant Napolitano testified that while it was possible for a petit larceny complaint report which contained either a named suspect, a good description of a suspect or represented a pattern of larcenies to remain open to the Detective Squad, most petit larcenies were closed at the patrol level, meaning no further investigation would be required (T. 43-45).

On cross-examination, Lieutenant Napolitano was confronted with a May 11, 2017, DD-5 prepared by Detective Robert McCormick of the 102nd Precinct Detective Squad (T. 46-48; Resp. Ex. A). Detective McCormick wrote in the narrative:

> "On May 11, 2017, at approximately 1600 hours, I spoke with the complainant[4] on his cell phone[5]. He states that an unknown male black approached him, asked to use his phone and to borrow some money. He states that he handed him his cell phone that he used to listen to his music, then handed him forty dollars USC. This unknown person then walked away from him without giving his property back. He further states that the phone did not have service, this was an old phone that he used to listen to his music and go on the internet. He further states that he has never seen this person before and states that he was approximately 30-35 years old. He refuses to come in to view photos."

(T. 47; Resp. Ex. A).

Lieutenant Napolitano conceded that he was unaware of whether Detective McCormick was interviewed during the investigation (T. 48). He conceded further that Detective

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[4] The name of the complainant appears on the DD-5 but is omitted from this memorandum in the interest of the victim's privacy, as he did not appear before this Tribunal.

[5] The cellular telephone number of the victim is listed on the DD-5 but is omitted from this memorandum in the interest of the victim's privacy, as he did not appear before this Tribunal

McCormick's narrative did not include a threat of force and described the cell phone as lacking service (T. 49-50). Lieutenant Napolitano testified that he was unaware of whether Respondent made the decision to classify the crime as a petit larceny before the complainant was taken to the Detective Squad (T. 51). He opined that based upon his training and experience, it would be unusual for a police officer attempting to downgrade a felony to a misdemeanor to send complainants to the detective squad (T. 55). While Lieutenant Napolitano did not know whether Respondent made the decision to close the case as a petit larceny after the complainant spoke with detectives, he was clear that the decision to close the case with that classification was Respondent's (T. 60-61).

Lieutenant Napolitano testified that the basis for his opinions regarding the proper classification of criminal offenses was the Crime Complaint Classification Guide, a publication of the Quality Assurance Division (T. 62).

Police Officer Bartolomeo D'Angelo testified that on April 29, 2017, he was performing patrol duties in the 102nd Precinct with Police Officer Iglesias on Third Platoon (T. 202). During that tour, he was directed to respond to a location for a complaint of a past robbery (*Id.*). When Police Officer D'Angelo arrived at the address, he was met by a woman who he described as "very irate," flailing her arms, and talking over him, saying, "robbery, robbery" (T. 202-203). According to Police Officer D'Angelo, the woman was "impeding [his] investigation," as he was unable to ask her any questions. He described seeing three males standing behind her who he described as "unphased, nonchalant, just hanging out. They didn't look at all troubled" (T. 203).

Police Officer D'Angelo testified that he contacted Respondent for guidance, as the report came over the radio as a robbery; Respondent instructed him to take the three males in his vehicle and conduct a canvass (T. 203-204). After the males entered the vehicle, Police Officer

D'Angelo attempted to elicit more information from them about the robbery (T. 204). He testified that the males told him that: (1) they were approached by a black male in his 40s, on a bicycle; (2) he asked for $40 cash and asked if he could use one of their cell phones; and (3) no threats were made to them (T. 204, 206). Once they arrived at the crime scene, the three males exited Police Officer D'Angelo's vehicle; Respondent arrived on scene, took over the investigation and commenced his own interview with them (T. 204, 208).

Police Officer D'Angelo returned to the 102nd Precinct and took the three males to the Detective Squad, at Respondent's direction (T. 205). Once the three males had spoken with the Detective Squad, "it was determined that it was petit larceny and changed – we put down petit larceny on the report" (*Id.*).

Police Officer D'Angelo testified that he harbored suspicions that the actual crime was a petit larceny based upon his belief that "the males were so unphased, and that the gentleman asked for specifically 40 dollars, and asked if he could use the cell phone and that they said there was no force made" (T. 209). He testified further that, "[w]ell, normally people get robbed, they are, you know, agitated, nervous, you know, a mix of emotions, and these gentlemen were just – just not – didn't seem right" (*Id.*). Police Officer D'Angelo testified that while he had doubts about whether the victim had been robbed, he did not share those concerns with Respondent (*Id.*). He claimed that Respondent conducted his own interview of the three males in his presence and that he returned to his vehicle with Police Officer Iglesias (T. 209-210).

Police Officer D'Angelo testified that when they returned to the 102nd Precinct, the three males went up to the Detective Squad but that he did not know what transpired in that office; he finalized his report and filled out the pedigree information (T. 210). He did not remember discussing the crime classification with Police Officer Iglesias and did not remember Police

Officer Iglesias telling him he thought it was a robbery (T. 210-211). Police Officer D'Angelo confirmed that he was the operator during that tour of duty; when questioned whether it was common for the operator to complete the UF-61 rather than the recorder, he asserted:

> "It all depends on the recorder's experience basically. He was very new at the time. He was very – kind of, unfamiliar with doing any majors, which was, you know, finalizing reports if it was a robbery."

(T. 211).

Police Officer D'Angelo testified that he did not recall at what point he realized that he was going to be filling out the complaint report (*Id.*). He testified that the information he included in the narrative came from "the facts that took place and what was said to me on the scene" by the victim (T. 212). He conceded that the commission of a robbery did not depend upon the use of a weapon or the infliction of injury; all that was required was a threat of force (*Id.*). Police Officer D'Angelo testified that all three males told him that they just gave the $40 and the cell phone, never saying that they were forced to (T. 212-213). He admitted that he never questioned Respondent about the reason for conducting a canvass if the three males gave the money to the suspect; similarly, he never questioned Respondent about the need for the three males to go to the Detective Squad (T. 213-214). At first, Police Officer D'Angelo claimed that even after conducting a canvass and taking the three males to the Detective Squad, he had "[no] feeling[s] one way or the other" as to whether the crime was a robbery or a petit larceny, but then asserted that he believed the crime was "more towards petit larceny" (T. 214). He testified that he made no activity log entry regarding this investigation because "[he] was the operator that day" (T. 215).

On cross-examination, Police Officer D'Angelo was confronted with his official Department interview transcript and conceded that he previously told investigators that he had

informed Respondent that the complainant had told him he was in fear for his physical safety (T. 217). Despite this concession, he explained that:

> "I'm – no threats were made. I'm pretty sure that's what I said before, and I'm pretty sure he was nervous and that's why he let the man use the cell phone. I don't think he was really – he felt threatened.
>
> He was – I seem to remember asking, 'Why did you let him use the cell phone?' He said, 'I was just nervous. I let him use it.'"

(T. 218). When asked again whether the complainant had told him that he was in fear of his safety, Police Officer D'Angelo replied that he did not recall (T. 219). On re-direct examination, he testified that he recalled the complainant telling him in the car that no threats were made (T. 220). Under questioning by the Tribunal, Police Officer D'Angelo testified that Police Officer Iglesias was present in the vehicle during the transportation of the three males and would have been in a position to hear them assert that no threats had been made, had such assertion actually been made (T. 221).

On re-cross examination, Police Officer D'Angelo asserted that even though he switched from his anticipated role of operator to recorder for the incident, it was unnecessary for him to make an activity log entry, as he could simply rely on Police Officer Iglesias' activity log; he then conceded that he was unaware that Police Officer Iglesias' memo book entry included a notation that the crime was classified as a petit larceny at Respondent's direction (T. 224-225).

Respondent testified that on April 29, 2017, at approximately 1845 hours, he received a telephone call from Police Officer D'Angelo, who informed him that he was at the residence of the victim of a supposed past robbery. Respondent asked Police Officer D'Angelo if he was at the location of the robbery and D'Angelo informed him that the robbery had taken place on Jamaica Avenue. Respondent then directed Police Officer D'Angelo to bring the complainant to the crime scene location and that he would meet him there (T. 234-235).

When Respondent arrived at the crime scene, he observed Police Officer D'Angelo standing outside his vehicle and three males standing together nearby; Police Officer Iglesias was inside the vehicle, apparently writing something (T. 235). Respondent approached Police Officer D'Angelo and asked him what happened; D'Angelo reported that money and a cell phone were taken from an individual (T. 236). Respondent asked Police Officer D'Angelo whether all three males had been robbed; D'Angelo responded that only one of the males had been (*Id.*).

Respondent approached the three males and asked, "Who's the victim? Who got robbed?" (*Id.*). One individual raised his hand and said, "I did" (*Id.*). When Respondent asked the male what happened, he said that an unknown male in his 40s or 50s, wearing a red shirt and riding a bicycle, approached him and asked for money and a cell phone, then left (*Id.*). All three males returned home and informed their mother what had transpired; she then called 911 (T. 237). Respondent asked the complainant how much money he lost and he replied, "$40" (*Id.*).

Respondent then turned his attention to the other two males and asked them who they were; Respondent did not recall whether they were brothers or cousins but believed that they were related, based upon their responses (*Id.*). Respondent then asked them whether they had been robbed as well; the two males denied that they had (*Id.*). Respondent then asked whether they had been present while their brother was being robbed; they answered that they had (*Id.*). Respondent then asked them, "So, how did that go about? So, your brother gets robbed and you're just standing there? Did you do anything? Was there any force, weapons displayed, threats made?" (*Id.*). According to Respondent, "They just nodded, but at that point, they started looking at each other for answers. Like, the more questions I would ask, the more they would look at one another" (T. 237-238).

Respondent then turned back to the complainant and asked, "Okay, you had $40 taken from you, right?" which the complainant confirmed. Respondent then asked, "That's all you had on you?" the complainant answered that he had more money in his possession. Respondent then asked, "You have more money, but the perpetrator only took $40 from you?" which the complainant confirmed. Respondent asked the other two males, "And none of you guys got robbed, correct?" which they confirmed (T. 238).

According to Respondent, he asked the complainant whether that was the only property he had taken from him, then asked the other two males whether they had also had phones and money taken from them; they responded that they had their phones. Respondent then asked, "Why didn't you call 911 from the scene if you still have the phones on you?" (T. 243).

When asked by his counsel whether he found that interaction unusual, Respondent testified:

> "It's hard to explain. Like I've been – I've seen a lot of victims, more than I can wish to remember, and victims of a robbery, they just – they act differently when robbed. Now I know every person is different, and every person, you know, has their way of dealing with stuff, but I've never seen, in my experience, where a perpetrator would approach, not kids, but young adults, and only rob one person of their property and not only take everything. He only took $40. So I asked them – I'm like, 'Guys, it makes no sense. You want to tell me the truth before I start looking at surveillance cameras?'"

(T. 239). According to Respondent, one of the brothers said, "Okay, we came out of the Chinese store. Some guy approached us and asked for $40. We gave him $40 and he asked to make a phone call. We gave him the phone. He tried making the phone call but hopped on his bike and left" (T. 239-240).

Respondent continued, testifying: "That $40 stuck with me. Why would you give someone $40? That makes no – why $40? Why not $20? Why not $10? Why not $100 because he had more money on him? . . . The more I questioned him, the less answers I got. I

was – I was getting no answers but at that point, since they changed their story, I knew that there was no robbery. It was almost like, they were afraid to tell me the truth what happened. That they were like, going to get in trouble for that and they kept making things up as they went along" (T. 240).

When Respondent asked whether the phone could be tracked, he was informed that it did not work; the three males indicated, however, that they could identify the suspect. Respondent then told Police Officers D'Angelo and Iglesias, "Guys, it's not a robbery. Take these three individuals back to the precinct. Have them speak with the detective. Have them look at the photos and see if we can ID this guy" (*Id.*).

According to Respondent, Police Officers D'Angelo and Iglesias transported the three males to the 102nd Precinct and took them to the Detective Squad. Respondent recalled that he was called away to an assault in progress and did not remain at the precinct but he advised Police Officer D'Angelo to "keep [him] in the loop." A short time later, he received a telephone call from Police Officer D'Angelo informing him that the three males were unable to make a photo identification. Respondent then directed D'Angelo to "close the 61 as [a] petit larceny" (T. 241-242).

On cross-examination, Respondent testified that while he did believe that the complainant had been the victim of a crime, he did not believe the crime was the one the complainant reported (T. 255). He reasserted that "once the story got changed, I knew a robbery didn't happen" and asserted, "you lose your credibility when you change your story" (T. 257, 259).

Respondent claimed that when he went to the complainant's residence, he observed Police Officer Iglesias writing something but did not learn that he had prepared a scratch 61 until he was confronted with that fact at a Department interview (T. 261). Respondent did not recall

speaking directly to Iglesias but claimed that "I talk to my cops at once. I don't pick and choose who I speak to. So, whoever I spoke to, I told them that it's not a robbery. Take him to view the pictures of the perpetrator for the cell phone, and we finalize it as a petit larceny" (T. 261-262). He did not recall whether he eventually read the complaint report prepared by Police Officer D'Angelo (T. 262).

Specification 1: Misclassification of Robbery

I find that the Department Advocate has established by a preponderance of the relevant, credible evidence that Respondent wrongfully instructed a subordinate to classify the April 29, 2017, incident as a petit larceny.

Under New York law, a person "commits robbery when, in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of . . . preventing or overcoming resistance to the taking of property or to the retention thereof immediately after the taking" (*People v. Villanueva*, 148 A.D.3d 210 [1st Dep't 2017]; *Penal Law § 160.00*). "The statute does not require the use of any words whatsoever, but merely that there be a threat, whatever its nature, of the immediate use of physical force" (*People .v Woods*, 41 N.Y.2d 279, 283 [1977]). There is no requirement that a weapon be displayed or that the victim be physically injured to demonstrate that there was a threat of immediate physical force (*see People v. Bennett*, 219 A.D.2d 570 [1st Dept. 1995] *lv denied* 87 NY2d 844 [1995]). The threat of the immediate use of force may be demonstrated by a "chain of actions on the part of [the] defendant" (*People v. Thomas*, 273 A.D.2d 161, 162 [1st Dept. 2000] *lv denied* 95 NY2d 908 [2000]) that "convey[s] the impression that disobeying [her] commands could result in imminent physical repercussions" (*People v. Smith*, 22 N.Y.3d 1092, 1094 [2014]).

As set forth above, I have credited Police Officer Iglesias' testimony that when he first spoke to the complainant, the complainant told him that an older man demanded that he "dash out [his] pockets or I'm going to punch you in the face." The complainant further informed Iglesias that he then gave the man $40 and his cell phone. These factual assertions are sufficient to establish a *prima facie* case of Robbery in the Third Degree under New York law (*Penal Law § 160.05*).

While Respondent testified that one of the brothers told him that the suspect had asked for $40 and asked to make a phone call, an assertion apparently corroborated by Detective McCormick, when the complainant was later contacted by Sergeant Lasko, he reasserted that he was told to surrender his property under threat of death and that he had told this to the responding police officers at the time of the incident[6].

Respondent's doubts about the veracity of the complainant, which I do not credit, appear to be based upon his view of how a person should behave during the course of a robbery. From his perspective, it was suspicious that the victim did not hand over all the money in his possession. It is possible that the victim made a conscious choice to hand over only a portion of his property, based on what currency may have been available in a single pocket, relying on the assumption that the robber was unware of how much money he had in his possession. It is highly unlikely that the victim, in the presence of the robber, took out a wad of currency and counted out only $40, retaining the rest. It is also possible that the victim immediately complied with the demand, handing over whatever he could access in his pocket in the heat of the moment and only realized after the fact that he had surrendered only a portion of the money in his possession. In any case, the failure to surrender all the property in his possession does not

[6] In his initial statement to Police Officer Iglesias, the complainant said the threat was to punch him in his face.

vitiate, as a matter of law, the forcible taking of the property that he did surrender in response to the threat of force.

Respondent also expressed doubt about the victim's veracity based on his brothers' failure to deliver their property. His testimony that "So, your brother gets robbed and you're just standing there? Did you do anything?" suggests that he had a subjective expectation that the brothers should have manifested resistance to the supposed threat and that the absence of such resistance makes it less likely that there was a genuine threat. I observed Respondent's demeanor throughout his testimony and I find that this assertion, as well as others, were expressed with a tone of incredulity amounting to victim-shaming. If Respondent's in-court demeanor was consistent with the manner in which he questioned the complainant and his brothers, they may well have backed off their initial factual assertions. While Respondent expressed the view that the brothers seemed to be afraid to tell him what really happened, it is also possible that there was a breakdown in communication.

Even if Respondent had a genuine concern about the varying versions of the events he claims to have heard from the three brothers, such concerns should have been passed on to the Detective Squad for further investigation, rather than downgrading the crime.

Respondent's concession on cross-examination, that he would have been more likely to classify the crime as a robbery if the brothers had identified a suspect he knew to be a robbery recidivist, was revealing. Based upon that admission, a criminal suspect's record was apparently capable of eliminating Respondent's doubt about a victim's veracity, giving new life to the phrase "the usual suspects."

There is no requirement under New York law that all persons present during a robbery must surrender their property in order for any of those persons to be the victim of a completed

robbery. There is similarly no requirement that all witnesses to a purported threat of physical force feel equally threatened in order for one person to perceive a threat. Respondent's responsibilities to the public did not require him to adopt the role of the suspect's attorney at a subsequent criminal trial. The District Attorney's office, and not Respondent, has the responsibility to make a proper charging decision once an arrest was made. On the basis of the evidence available to Respondent at the time of the incident, this complaint should have been classified as a robbery and sent to the Detective Squad for further investigation.

Based upon the foregoing, I find Respondent Guilty of Specification 1.

Specification 2: Failure to Refer Robbery Complaint to Detective Squad

I find that the Department Advocate has met his burden of proof by a preponderance of the relevant, credible evidence to establish that Respondent failed to refer the April 29, 2017, incident as a robbery complaint, instead of a petit larceny complaint, to the 102nd Precinct Detective Squad for further investigation.

Patrol Guide 207-07, paragraph 7(f) requires complaints to be referred to the Detective Squad whenever "a perpetrator may be identified or is known."

The factual and legal analysis discussed above in Specification 1 is incorporated herein by reference.

While it is undisputed that Respondent directed the purported victim of the April 29, 2017, incident, as well as his two brothers, to be taken to the 102nd Precinct Detective Squad for the purpose of examining photographs of possible suspects, the information which would have been provided to the squad was that the crime was a petit larceny. This Tribunal does not require additional evidence to conclude that the classification of a petit larceny, versus a robbery, was likely a significant one in terms of prioritizing limited investigative resources.

Based upon the foregoing, I find Respondent Guilty of Specification 2.

March 19, 2018 Burglary

Police Officer Christopher Scheer testified that on March 19, 2018, he was assigned to patrol duties in the 102nd Precinct on First Platoon (T. 140-141). At about 1215 hours, he received a report of a past burglary at a yeshiva (T. 142-143). When he responded to the location, he was met by a student, who informed him that a laptop computer was missing from the library and that the student had viewed a video recording of an unknown male leaving the school (T. 146-147, 162; Dept. Ex. 3). Police Officer Scheer canvassed the building, looking for signs of a forced entry, such as broken glass or windows left open (T. 145). He saw no such signs and did not encounter the alleged perpetrator (T. 145, 164). Police Officer Scheer was informed by the complainant that the school permitted 24-hour access through a pin pad (T. 161). After approximately 40 minutes, Police Officer Scheer contacted Respondent and summoned him to the scene, based upon his belief that a burglary had occurred (T. 146-147, 166).

When Respondent arrived at the location, he conducted his own investigation, some of which was observed by Police Officer Scheer (T. 148). One of the investigative steps Respondent took was an interview of the complainant (*Id.*). Once Respondent completed his interview of the complainant, he spoke with Police Officer Scheer (T. 149). According to Police Officer Scheer, Respondent told him to prepare a report (*Id.*).

In the narrative, Police Officer Scheer wrote, "TPO C/V states that above listed items were missing from the location. Upon inspection of security camera by the complainant, a male was seen removing the property. The school is open 24/7 and protected via numeric pass code. PD was unable to access security video. Upon inspection of the property, there was no sign of

force [sic] entry. Cameras at location. Canvas [sic] conducted. Negative results. ECT notified and will respond. Sergeant Rozenfeld on scene" (T. 151; Dept. Ex. 3).

Police Officer Scheer testified that he informed Respondent that he thought the crime was a burglary; Respondent replied that he believed the crime was a petit larceny (T. 152, 164). He testified that he disagreed with this classification and made the following entry in his activity log: "At 221 as per Sergeant Rozenfeld petit larceny" (T. 153; Dept. Ex. 1). Police Officer Scheer believed at the time he made the entry that he wanted to protect himself from discipline for a misclassification of the crime (T. 154-155). He also made an entry on the scratch 61 of "petit larceny" in the crime classification (T. 155; Dept. Ex. 3). Police Officer Scheer and his partner then returned to the 102nd Precinct, where Respondent asked him for the scratch 61 (T. 156). After he gave the scratch 61 to Respondent, he never saw it again (*Id.*).

There came a time when Police Officer Scheer was interviewed by investigators from the Internal Affairs Bureau and questioned about the final report (T. 157). When confronted with the final copy of the report, Police Officer Scheer noticed that changes had been made to the report since he surrendered it to Respondent; specifically, he observed that "petit larceny" had been crossed out and replaced by "Burglary" (*Id.*; Dept. Ex. 3).

Police Officer Scheer testified that he did not know who made the changes to his original report but that when Respondent told him to prepare a report with a petit larceny classification, he believed that Respondent was downgrading the offense (T. 158-159). He conceded that while he never questioned Respondent about his reasoning for classifying the crime as a petit larceny, Respondent explained to him that he did not know whether the person had permission to be on the premises (T. 159, 172).

Police Officer Scheer testified on cross-examination that he did not recall Respondent saying: (1) "We got a petit larceny right now but it might be a burglary after we watch the video"; (2) that they had to establish that the suspect did not enter the school lawfully using the pin pad; or (3) that he should leave the classification of the crime blank on the scratch 61 until they determined whether they really had a burglary (T. 164-165). He asserted that Respondent directed him to classify the crime as a petit larceny and to make that entry on the complaint form (T. 165).

Lieutenant Napolitano testified that he received a referral from the Internal Affairs Bureau alleging that Respondent had directed Police Officer Scheer to downgrade a complaint (T. 19). He reviewed the Omniform complaint report, the worksheet copy of the report and the activity logs of the members of Service involved; he then conducted department interviews (T. 20).

After reviewing the narrative in Department Exhibit 3, Lieutenant Napolitano testified that, in his view, the facts set forth warranted classification as a burglary (T. 25, 30). He testified that the crime was originally classified as a petit larceny, based upon the words "petit larceny" being scratched out and "burglary" appearing next to the lined out words (T. 26). Lieutenant Napolitano was unable to determine who had crossed out the words "petit larceny" on the scratch copy of the UF-61 (*Id.*). He then interviewed Police Officer Scheer, who provided a copy of his activity log concerning the incident (T. 27; Dept. Ex. 2). Lieutenant Napolitano's review of Police Officer Scheer's activity log revealed that Scheer had made an entry indicating that he "responded to the incident and indicated that, as per Sergeant Rozenfeld, petit larceny" (T. 28). Lieutenant Napolitano testified that based upon his training and experience, the presence of such

an entry in an activity log often indicates that the Member of Service disagreed with the direction given[7] (T. 29).

Respondent testified that on March 19, 2018, at approximately 1230 hours, he received a request to respond to a yeshiva for a suspected burglary (T. 244). The school had an entrance and an exit, with a keypad entry system (*Id.*). Upon his arrival, he saw Police Officer Scheer speaking with a complainant (*Id.*). Respondent asked Police Officer Scheer for his report and was informed that a laptop computer was missing from the school library and that the school had a video surveillance system (*Id.*). Police Officer Scheer told him that the video system was not available to them at that time, as it was located in a locked office which they would be unable to access until the building manager reported for work at 0800 hours (T. 245). Respondent and Police Officer Scheer conducted a canvass of the building looking for signs of forced entry; in addition, they interviewed students (*Id.*). There were no signs of forced entry (T. 245-246).

According to Respondent, one of the students claimed to have reviewed the video and saw a Black male with a face covering removing the laptop; the student opined that the person looked like a janitor who worked at the school. He then decided that he wanted to review the video himself before finalizing the UF-61. Respondent told Police Officer Scheer to fill out the complaint scratch form but to leave the crime classification blank; since Scheer was going to go off tour, Respondent would finalize the form in the morning (T. 246).

According to Respondent, "[a]s the midnights were going home, the day workers were coming in, and I noticed the 'crime guys' (Anti-Crime Unit) hanging by the front desk. I asked

[7] While Lieutenant Napolitano was not testifying as an expert, I find that his lay opinion was helpful to the finder of fact, as far as it pertained to his familiarity with the record-keeping practices of the Department, as he dealt with them in the context of audits of Department records. The Tribunal is not bound to accept his opinion as dispositive of the significance of the memo book entry.

them, I'm like, 'Guys, can you do me a favor? Can you swing by the yeshiva school at around eight o'clock in the morning, and let me know if the principal is going to be at the school, because I need to go out there and get the video?'" (T. 247). Sergeant Cerrelus, of the Anti-Crime unit, agreed and called Respondent thirty minutes later, reporting that the principal was at the school and was aware of what they were looking for; he further reported that the video was ready for pickup (*Id.*). He recorded the video on his mobile phone and showed it to Respondent when he returned to the precinct (*Id.*). Respondent viewed the video and saw a Black male wearing a face mask removing the property from the building; the principal had asserted that the person depicted on the video was not the school janitor (T. 247-248).

Respondent testified that he then went to the front desk to retrieve the scratch 61 Police Officer Scheer prepared; he saw "petit larceny" written in the crime classification, crossed it out and wrote "burglary" (T. 248). He then notified "CCT[8]," the Detective Squad and brought the form to the "124 room" for processing (*Id.*).

On cross-examination, Respondent conceded that it was possible for an employee to commit a burglary at their place of employment (T. 265). He further acknowledged that for a completed burglary to have occurred, someone would have had to enter the location, pick up property and walk out with the property, but countered that all that he was told was that a laptop was missing from the library (T. 266). He also conceded that before he asked Sergeant Cerrelus to obtain the video footage of the incident, he had been informed that the video showed someone "who looked like a janitor removed the property" (T. 267).

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[8] While the record is silent as to the meaning of this acronym, the Tribunal finds that it refers to 102nd Precinct Crime Analysis Unit.

Respondent claimed to have no knowledge of how the words "petit larceny" came to appear on the scratch 61 but opined that the handwriting on the form looked like Police Officer Scheer's; he later denied that he had ever instructed Scheer to write them on the form (T. 267, 270). He testified that he never asked Scheer why he would have written "petit larceny" on the form after being directed to leave it blank but claimed that there were other errors on the scratch 61 (T. 268). Respondent acknowledged that there was a significant difference between a petit larceny and a burglary but saw no need to reinstruct Police Officer Scheer, as he had gone on vacation the next day and he "didn't think it was a big deal, because [the] complaint report never entered the system. It was just a scratch copy at the moment" (T. 269).

Specification 3: Misclassification of Burglary

I find that the Department Advocate has established by a preponderance of the relevant, credible evidence that Respondent wrongfully instructed a subordinate to classify the March 19, 2018, incident as a petit larceny.

Under New York law, a person commits a burglary in the third degree when he enters or remains unlawfully in a building with the intent to commit a crime therein (*Penal Law § 140.20*). If the crime is charged as an unlawful entry, a defendant must have had the intent to commit a crime at the time of the entry (*People v Gaines*, 74 NY2d 358, 363 [1989]). Alternatively, if the crime is charged based upon unlawfully remaining inside a building, the defendant may form the intent to commit a crime at any time he remains on the premises (*Quarles v. United States*, 139 S.Ct. 1872 [2019]).

As set forth above, I credit Police Officer Scheer's testimony that he responded to the scene of a school building which, while in 24-hour operation, controlled access to the interior through a keypad; thus, the premises were not open to the public. Police Officer Scheer also

took a report from an occupant who asserted that he had seen a video recording of a surveillance camera which captured an unknown male carrying away a laptop computer. Based upon those facts alone, Police Officer Scheer had *prima facie* evidence that a burglary had been committed. The logic of his conclusion is supported by common sense and the state of the law.

Police Officer Scheer indicated his disposition to classify the crime as a burglary, which Respondent rejected at the scene. Scheer's decision to memorialize Respondent's direction in his activity log was logical, given that he believed Respondent's decision, which he was authorized to make based upon his position as the Patrol Supervisor, was nevertheless incorrect. His entry of "petit larceny" on the scratch 61 makes sense based upon his stated belief that he was following a lawful order, albeit one with which he disagreed.

In contrast, Respondent's testimony seemed labored and calculated to justify the deferral of a decision which he claims he made at the precinct after Police Officer Scheer ended his tour, rather than at the scene, as Scheer testified. There is no dispute that he saw no evidence of a forced entry into the building, aligning with Scheer's observations of the scene. A complainant at the school reported that he had seen a surveillance video which captured the taking of the property, with the suspect bearing some physical similarity to the school janitor, but Respondent's testimony suggests that he believed that assertion was an insufficient basis for him to classify the crime as a burglary. He testified that he had to enlist the efforts of the precinct Anti-Crime Sergeant to obtain a copy of the tape the next morning and view it himself before he felt comfortable classifying the crime as a burglary.

This rationalization is self-serving and contrary to the state of the law. As set forth above, whether the person who took the laptop was an intruder who gained access to the building as a result of someone's carelessness in failing to secure a locked door or an employee who had a

license to be on the premises for a limited purpose but exceeded the bounds of that license once he formed the intent to take property from the library, either scenario constituted a burglary under New York law (*see People v. Thomas*, 38 A.D.3d 1134 [3rd Dept. 2007][defendant, convicted of Burglary in the Third Degree who entered a laundromat, which was open to the public, then entered a storage room which the attendant forgot to lock, and took a bag of quarters valued at $300, entered the premises unlawfully]; *see People v. Izzo*, 96 Misc.2d 634 [N.Y.C. Crim. Ct. 1978][right to be present on premises pursuant to status as an employee does not confer right to be present for purpose outside scope of employee's normal duties and functions]). The crime might also be charged as a Grand Larceny in the Fourth Degree (*Penal Law § 155.30[1]*), were the laptop valued at greater than $1,000, but this possibility still would not justify directing a classification as a petit larceny.

Respondent's expressed concern that the suspect may have been the school janitor is of no legal significance. Even after Respondent viewed a copy of the recording and saw that it depicted a man in a mask removing the laptop, such evidence would not necessarily eliminate the possibility that the burglar was, in fact, the janitor attempting to obscure his identity, possibly well aware that surveillance cameras were on the premises. While the school principal did assert that the individual on the recording was not the school janitor, that assertion had no legal impact on whether a burglary had been committed.

Furthermore, Respondent's claim that he was surprised to find "petit larceny" written on the scratch 61 after he supposedly instructed Police Officer Scheer to leave the classification block blank, is dubious. It is much more plausible that Scheer wrote "petit larceny" as per Respondent's instructions, memorialized the order in his activity log, and then gave it to Respondent at the precinct, as he testified.

Based upon the foregoing, I find Respondent Guilty of Specification 3.

PENALTY

In order to determine an appropriate penalty for Respondent, his service record was examined (*see Matter of Pell v Board of Educ.*, 34 N.Y.2d 222, 240 [1974]). Respondent was appointed to the Department on July 10, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has a prior formal disciplinary history.

The Department Advocate has recommended that Respondent forfeit twenty vacation days. This recommendation is consistent with prior Department precedent for single instances of downgrading offenses (*Disciplinary Case No. 2014-11822* [May 27, 2016][Nine-year respondent with no disciplinary history forfeited ten vacation days after being found guilty of : (1) misclassifying a larceny complaint as "lost property"; (2) filling out a Complainant's Report of Lost or Stolen Property instead of having the complainant do it]; *Disciplinary Case No. 2013-10908* [March 22, 2016][Ten-year respondent with no disciplinary history forfeited ten vacation days after being found guilty of: (1) misclassifying a robbery as a petit larceny; and (2) failing to notify the Detective Squad that further investigations was required for a robbery with a firearm]).

I consider Respondent's position as a sergeant and Patrol Supervisor to be an aggravating factor in this case. Sergeants in this Department are first-line supervisors who have the opportunity to make lasting impressions upon the police officers they supervise. In addition to exercising administrative supervisory authority, they serve a critical training function.

In two instances, Respondent modeled questionable professional judgement witnessed by two subordinates which so adversely impressed each of them that they made contemporaneous

memoranda documenting the suspect direction. While Respondent is not charged with failing to adequately supervise the subordinate officers, the absence of any counseling of Police Officer Iglesias to help him to better understand Respondent's assessment of the supposed robbery, or Police Officer Scheer to impress upon him the necessity for obedience to Respondent's supposed order to leave the classification space blank, suggest that his directives were self-serving and not intended to serve any greater interest than his own.

I make no finding that Respondent's directions, which form the basis of my Guilty findings, were specifically motivated to artificially suppress crime statistics in the 102nd Precinct.

Inasmuch as Respondent was found guilty of two instances of misclassifying crimes, I concur in the Department Advocate's recommendation of 20 vacation days. I recommend an additional forfeiture of 3 vacation days for the aggravating factor described above. Accordingly, I recommend that Respondent forfeit twenty-three (23) vacation days.

Respectfully submitted,

Paul Gamble (by JSA)

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED
JAN 26 2021
DERMOT SHEA
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT JASON ROZENFELD
TAX REGISTRY NO. 942481
DISCIPLINARY CASE NO. 2018-18756

Respondent was appointed to the Department on July 10, 2006. On his last three annual performance evaluations, he received 4.5 overall ratings of "Highly Competent/Extremely Competent" for 2017, 2018 and 2019. He has been awarded eight medals for Excellent Police Duty and one medal for Meritorious Police Duty. [redacted]

In 2015, Respondent pled Guilty to striking a subordinate on the buttocks with a ruler and forfeited 15 vacation days. In connection with the instant matter, he was placed on Level 1 Discipline Monitoring on March 28, 2019. Monitoring remains ongoing.

For your consideration.

Paul Gamble (by JJA)

Paul M. Gamble
Assistant Deputy Commissioner Trials